

## **Assembly Bill No. 1950**

### **CHAPTER 565**

An act to add Sections 765.5 and 6850.5, to the Financial Code, and to amend Sections 2351, 2359, 2401, 2403, and 2620 of, and to add Sections 2111.5 and 2401.6 to, the Probate Code, relating to conservatorship and guardianship.

[Approved by Governor September 18, 2000. Filed  
with Secretary of State September 20, 2000.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 1950, Rod Pacheco.** Conservatorships and guardianships.

Existing law provides procedures by which banks and trust companies are required to handle deposits from an estate, as specified, that are subject to a court order. Existing law also provides that a savings association may accept fiduciary savings accounts from specified parties for a named beneficiary or beneficiaries.

This bill would require banks, trust companies, and savings associations to send specified documents to the court having jurisdiction of a guardianship or conservatorship when a guardian or conservator, pursuant to letters of guardianship or conservatorship, opens an account for the estate, or changes the name of an existing account to reflect the guardianship or conservatorship.

Existing law requires that a guardian or conservator of a person be responsible for the care, custody, control, and education of a ward or conservatee, subject to a court's determination of the extent of those powers, as specified.

This bill would provide that a guardian or conservator of a person, in exercising his or her powers, may not hire or refer business to an entity in which he or she has a financial interest except with court authorization following a disclosure to the court in writing of his or her financial interest, as defined, in the entity. This bill would also provide that when a guardian or conservator of a person petitions a court for approval of property transactions, he or she must disclose certain family relationships, as defined, with other parties to the transaction. A violation of these provisions would result in rescission of the transaction and potential liability for damages and a civil penalty or a fine.

Existing law provides that a guardian, conservator, or limited conservator of an estate is responsible for the management and control of the estate, and shall use ordinary care and diligence in exercising his or her powers.

This bill would provide that a guardian or conservator or limited conservator of an estate, in exercising his or her powers, may not hire

or refer business to an entity in which he or she has a financial interest except with court authorization following a disclosure to the court in writing of his or her financial interest, as defined, in the entity. This bill would also provide that when a guardian or conservator of an estate petitions a court for approval of property transactions, he or she must disclose certain family relationships, as defined, with other parties to the transaction. A violation of these provisions would result in rescission of the transaction and potential liability for damages and a civil penalty or a fine.

Existing law requires that a guardian or conservator use ordinary care and diligence in managing and controlling an estate. Existing law further provides that a guardian or conservator who breaches a fiduciary duty is liable for, among other items, loss in the value of the estate, lost profits, and interest on these amounts.

This bill would provide that any surcharge that a guardian or conservator incurs as a result of the above-described liability may not be paid by or offset against future fees or wages to be provided by the estate to the guardian or conservator.

Existing law provides that a guardian or conservator shall make a periodic accounting, as specified, of the estate of the ward or conservatee after one year from the time of appointment, and not less than biennially, unless otherwise ordered by the court. Existing law further provides that a guardian or conservator shall make a final accounting following the death of the ward or conservatee, to include an account for the period ending on the date of death and a separate account for the period subsequent to the date of death.

This bill would require that, as part of the above-described accountings, a guardian or conservator submit copies of specified account statements from financial institutions where estate money is deposited.

Existing law provides that the superior court has jurisdiction over guardianship and conservatorship proceedings.

This bill would prohibit any court official or employee, or any person related by blood or marriage, as defined, who is involved in the appointment of a conservator or guardian, or the processing of any document relating to a conservator or guardian, from purchasing, leasing, or renting the personal or real property from the estate of a conservatee or a ward whom the conservator or guardian represents. A violation of these provisions would result in rescission of the property transaction and potential liability for damages and a civil penalty or a fine.

*The people of the State of California do enact as follows:*

SECTION 1. Section 765.5 is added to the Financial Code, to read:

765.5. When a guardian or conservator, pursuant to letters of guardianship or conservatorship, opens an account for the estate in



a bank or trust company, or changes the name of an existing account to reflect the guardianship or conservatorship, the bank or trust company shall send to the court having jurisdiction of the guardianship or conservatorship a copy of the documents that evidence the change.

SEC. 2. Section 6850.5 is added to the Financial Code, to read:

6850.5. When a guardian or conservator, pursuant to letters of guardianship or conservatorship, opens an account for the estate in a savings association, or changes the name of an existing account to reflect the guardianship or conservatorship, the savings association shall send to the court having jurisdiction of the guardianship or conservatorship a copy of the documents that evidence the change.

SEC. 3. Section 2111.5 is added to the Probate Code, to read:

2111.5. (a) Except as provided in subdivision (b), every court official or employee who has duties or responsibilities related to the appointment of a guardian or conservator, or the processing of any document related to a guardian or conservator, and every person who is related by blood or marriage to a court official or employee who has these duties, is prohibited from purchasing, leasing, or renting any real or personal property from the estate of the ward or conservatee whom the guardian or conservator represents. For purposes of this subdivision, a “person related by blood or marriage” means any of the following:

(1) A person’s spouse.

(2) Relatives within the second degree of lineal or collateral consanguinity of a person or a person’s spouse.

(b) A person described in subdivision (a) is not prohibited from purchasing real or personal property from the estate of the ward or conservatee whom the guardian or conservator represents where the purchase is made under terms and conditions of a public sale of the property.

(c) A violation of this section shall result in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the estate of the ward or conservatee because the property was sold or leased at less than fair market value shall be deemed as charges against the guardian or conservator under the provisions of Sections 2401.3 and 2401.5. The court shall assess a civil penalty equal to three times the charges against the guardian, conservator, or other person in violation of this section, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court shall order the guardian, conservator, or other person in violation of this section to pay a fine of up to five thousand dollars (\$5,000) for each violation. The fines and penalties provided in this section are in addition to any other rights and remedies provided by law.

SEC. 4. Section 2351 of the Probate Code is amended to read:



2351. (a) Subject to subdivision (b), the guardian or conservator, but not a limited conservator, has the care, custody, and control of, and has charge of the education of, the ward or conservatee.

(b) Where the court determines that it is appropriate in the circumstances of the particular conservatee, the court, in its discretion, may limit the powers and duties that the conservator would otherwise have under subdivision (a) by an order stating either of the following:

(1) The specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee.

(2) The specific powers and duties the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's person that the conservator otherwise would have under subdivision (a).

(c) An order under this section (1) may be included in the order appointing a conservator of the person or (2) may be made, modified, or revoked upon a petition subsequently filed, notice of the hearing on the petition having been given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) The guardian or conservator, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest except upon authorization of the court. Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing his or her financial interest in the entity. For the purposes of this subdivision, "financial interest" shall mean (1) an ownership interest in a sole proprietorship, a partnership, or a closely held corporation, or (2) an ownership interest of greater than 1 percent of the outstanding shares in a publicly traded corporation, or (3) being an officer or a director of a corporation. This subdivision shall apply only to conservators and guardians required to register with the Statewide Registry under Chapter 13 (commencing with Section 2850).

SEC. 5. Section 2359 of the Probate Code is amended to read:

2359. (a) Upon petition of the guardian or conservator or ward or conservatee or other interested person, the court may authorize and instruct the guardian or conservator or approve and confirm the acts of the guardian or conservator.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) (1) When a guardian or conservator petitions for the approval of a purchase, lease, or rental of real or personal property from the estate of a ward or conservatee, the guardian or conservator shall provide a statement disclosing the family or affiliate relationship between the guardian and conservator and the purchaser, lessee, or renter of the property, and the family or affiliate relationship

between the guardian or conservator and any agent hired by the guardian or conservator.

(2) For the purposes of this subdivision, “family” means a person’s spouse or relatives within the second degree of lineal or collateral consanguinity of a person or a person’s spouse. For the purposes of this subdivision, “affiliate” means an entity that is under the direct control, indirect control, or common control of the guardian or conservator.

(3) A violation of this section shall result in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the estate of the ward or conservatee because the property was sold or leased at less than fair market value shall be deemed as charges against the guardian or conservator under the provisions of Sections 2401.3 and 2401.5. The court shall assess a civil penalty equal to three times the charges against the guardian, conservator, or other person in violation of this section, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court shall order the guardian, conservator, or other person in violation of this section to pay a fine of up to five thousand dollars (\$5,000) for each violation. The fines and penalties provided in this section are in addition to any other rights and remedies provided by law.

SEC. 6. Section 2401 of the Probate Code is amended to read:

2401. (a) The guardian or conservator, or limited conservator to the extent specifically and expressly provided in the appointing court’s order, has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The guardian or conservator:

(1) Shall exercise a power to the extent that ordinary care and diligence requires that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.

(c) The guardian or conservator, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest except upon authorization of the court. Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing his or her financial interest in the entity. For the purposes of this subdivision, “financial interest” shall mean (1) an ownership interest in a sole proprietorship, a partnership, or a closely held corporation, or (2) an ownership interest of greater than 1 percent of the outstanding shares in a publicly held corporation, or (3) being an officer or a director of a corporation. This subdivision shall apply only to conservators and guardians required to register with the Statewide Registry under Chapter 13 (commencing with Section 2850).

SEC. 7. Section 2401.6 is added to the Probate Code, to read:

2401.6. Any surcharge that a guardian or conservator incurs under the provisions of Sections 2401.3 or 2401.5 may not be paid by or offset against future fees or wages to be provided by the estate to the guardian or conservator.

SEC. 8. Section 2403 of the Probate Code is amended to read:

2403. (a) Upon petition of the guardian or conservator, the ward or conservatee, a creditor, or other interested person, the court may authorize and instruct the guardian or conservator, or approve and confirm the acts of the guardian or conservator, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) (1) When a guardian or conservator petitions for the approval of a purchase, lease, or rental of real or personal property from the estate of a ward or conservatee, the guardian or conservator shall provide a statement disclosing the family or affiliate relationship between the guardian and conservator and the purchaser, lessee, or renter of the property, and the family or affiliate relationship between the guardian or conservator and any agent hired by the guardian or conservator.

(2) For the purposes of this subdivision, “family” means a person’s spouse or relatives within the second degree of lineal or collateral consanguinity of a person or a person’s spouse. For the purposes of this subdivision, “affiliate” means an entity that is under the direct control, indirect control, or common control of the guardian or conservator.

(3) A violation of this section shall result in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the estate of the ward or conservatee because the property was sold or leased at less than fair market value shall be deemed as charges against the guardian or conservator under the provisions of Sections 2401.3 and 2401.5. The court shall assess a civil penalty equal to three times the charges against the guardian, conservator, or other person in violation of this section, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court shall order the guardian, conservator, or other person in violation of this section to pay a fine of up to five thousand dollars (\$5,000) for each violation. The fines and penalties provided in this section are in addition to any other rights and remedies provided by law.

SEC. 9. Section 2620 of the Probate Code is amended to read:

2620. (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially,



unless otherwise ordered by the court, the guardian or conservator shall present the account of the guardian or conservator to the court for settlement and allowance in the manner provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3.

(b) The final account of the guardian or conservator following the death of the ward or conservatee shall include an account for the period that ended on the date of death and a separate account for the period subsequent to the date of death.

(c) As part of the first accounting required by subdivision (a), the guardian or conservator shall submit to the court a copy of the account statement from any financial institution where money belonging to the estate is deposited that accounts for the period immediately preceding the date the guardian or conservator was appointed and the account statement from any financial institution where money belonging to the estate is deposited that accounts for the period immediately preceding the date the accounting is filed. As part of subsequent accountings and the accounting required by subdivision (b), the guardian or conservator shall submit to the court the most recent account statement from any financial institution where money belonging to the estate is deposited. The account statements from any financial institution submitted pursuant to this section shall be confidential and subject to discovery only upon an order of the court.

